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Case No. 07-524

IN THE SUPREME COURT
OF THE UNITED STATES

WILLIAM VAN POYCK, *Petitioner*

vs.

STATE OF FLORIDA, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

CAPITAL CASE

As stated by Petitioner:

> (1) Where a defendant is sentenced to death by a judge and jury who made findings that he was the triggerman, is it a violation of the Eighth and Fourteenth Amendments to deny that defendant the right to present newly discovered evidence disproving the triggerman theory solely on the grounds that, as a matter of law, such evidence "probably" would not have affected the sentence?
>
> (2) Must reviewing courts in "weighing" states apply *Chapman v. California's* harmless error analysis, or *Boyde v. California's* "reasonable likelihood" standard to death sentences rendered inherently unreliable by findings that affect the sentence and are later shown to be affirmatively false?"

As restated by Respondent:

> WHETHER CERTIORARI IS WARRANTED TO REVIEW A STATE COURT RULING WHICH IS MERELY AN APPLICATION OF THE LONG ESTABLISHED STANDARD OF REVIEW FOR CLAIMS OF NEWLY DISCOVERED EVIDENCE WHEN THE ISSUES WERE

NEVER PRESENTED BELOW; IT DOES NOT PRESENT A FEDERAL QUESTION; NOR DOES IT CONFLICT WITH ANY OTHER FEDERAL PRECEDENT.

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Case No. 07-524

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ON PETITION FOR WRIT OF CERTIORARI
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OPINION BELOW

The opinion below has been reported as Van Poyck v. State, 961 So. 2d 220 (Fla. 2007).

CONSTITUTIONAL PROVISIONS

Respondent accepts as accurate Petitioner's statement regarding the applicable constitutional provisions involved.

JURISDICTION

Petitioner is seeking jurisdiction pursuant to 28 U.S.C. § 1257. Although this is the appropriate provision, the requirements of same have not been met.

STATEMENT OF THE CASE

The Florida Supreme Court entered its opinion on May 3, 2007. A motion for rehearing was denied on July 16, 2007. Petitioner is now seeking certiorari review in this Court.

STATEMENT OF THE FACTS

Van Poyck's status as the co-defendant who did not actually shoot police officer Fred Griffis has been reviewed extensively since 1990. On direct appeal, the Florida Supreme Court made a factual determination that William Van Poyck was not the actual shooter.[1] However, the Court upheld the sentence of death based on petitioner's major participation in the underlying crime. The court found:

> We find no merit in Van Poyck's claims that he was a minor actor and did not have the culpable mental state to kill. In DuBoise v. State, 520 So.2d 260 (Fla. 1988), we reiterated the established principle in Florida that the death penalty

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[1]On direct appeal, Van Poyck presented four claims addressed to the "triggerman" issue. He asserted: (1) the evidence against him was insufficient to support his conviction for premeditated first-degree murder (SR 35-45); (2) the trial court's Phase Two instructions failed to inform the jury of the mandatory Tison v. Arizona, 481 U.S. 137 (1987) and Enmund v. Florida, 458 U.S. 782 (1982) factual determination (SR 66-70); (3) the trial court erred in failing to make the required findings under Enmund/Tison in the sentencing order (SR 70-77); and (4) the death sentence is not proportional because Van Poyck was not the triggerman (SR 99-101). Van Poyck v. State, 564 So. 2d 1066, 1069-70 (Fla. 1990), *cert. denied*, 499 U.S. 932 (1991).

is appropriate even when the defendant is not the triggerman and discussed proportionate punishment, stating:

> In Tison the Court stated that Enmund covered two types of cases that occur at opposite ends of the felony-murder spectrum, i.e., "the minor actor in an armed robbery, not on the scene, who neither intended to kill nor was found to have had any culpable mental state" and "the felony murderer who actually killed, attempted to kill, or intended to kill." The Tison brothers, however, presented "the intermediate case of the defendant whose participation is major and whose mental state is one of reckless indifference to the value of human life." The Court recognized that the majority of American jurisdictions which provide for capital punishment "specifically authorize the death penalty in a felony-murder case where, though the defendant's mental state fell short of intent to kill, the defendant

was the major actor in a felony in which he knew death was highly likely to occur," and that "substantial participation in a violent felony under circumstances likely to result in the loss of innocent human life may justify the death penalty even absent an 'intent to kill.'" Commenting that focusing narrowly on the question of intent to kill is an unsatisfactory method of determining culpability, the Court held "*that major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the* Enmund *culpability requirement.*"

Id. at 265-66 (citations omitted, emphasis added) (quoting Tison v. Arizona, 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987)). Although the record does not establish that Van Poyck was the triggerman, it does establish that he was the instigator and the primary participant in this crime. He and Valdez arrived at the

> scene "armed to the teeth." Since there is no question that Van Poyck played the major role in this felony murder and that he knew lethal force could be used, we find that the death sentence is proportional.

Van Poyck, 564 So. 2d 1066, 1070-71 (Fla. 1990) (footnote omitted), *cert. denied,* 499 U.S. 932 (1991)(C-9-11). (emphasis supplied).

Petitioner's non-triggerman status was also raised in three state collateral proceedings. The first was in a motion for postconviction relief.[2] Van Poyck v. State, 694 So. 2d 686, 689 (Fla. 1997), *cert. denied,* 522 U.S. 995 (1997). The second was raised in a state

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[2]Van Poyck's postconviction claims regarding his non-triggerman status for sentencing purposes were as follows: "(6) the judge and jury weighed the invalid aggravating factors that the murder was premeditated or that Van Poyck was the triggerman" and "(11) *Edmund/Tison* errors necessitate a reversal of Van Poyck's death sentence." Van Poyck v. State, 694 So. 2d 686, 698 (Fla.), *cert denied,* 522 U.S. 995 (1997).

habeas petition[3]. Van Poyck v. Singletary, 715 So. 2d 930, 931 n.1 (Fla. 1998), *cert. denied*, 526 U.S. 1018 (1999). And the third was in a successive motion seeking DNA testing.[4] Van Poyck also sought relief in federal court. Therein he raised the issue that counsel was ineffective for failing to present forensic evidence that he was not the triggerman. All relief was denied. Van Poyck v. Florida Department of Corrections, 290 F. 3d 1318 (11th Cir.), *cert. denied*, 537 U.S. 812 (2002).

Respondent cannot accept Petitioner's rendition of the facts incorporated into the "STATEMENT OF THE CASE" as it contains improper argument;

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[3]In his habeas petition appellant raised the Enmund/Tison issue for a third time. Review was again denied: "This claim was raised and rejected on direct appeal, *Van Poyck*, 564 So. 2d at 1070-71, and also on the rule 3.850 appeal. *Van Poyck*, 694 So. 2d at 698." Van Poyck v. Singletary, 715 So. 2d 930 (Fla. 1998), *cert denied*, 526 U.S. 1018 (1999).

[4]Van Poyck argued that DNA testing of the clothes worn by himself and co-defendant Valdez would show that it was Valdez who fired the weapon that killed Officer Fred Griffis. The Florida Supreme Court upheld the trial court's summary denial of that claim. Van Poyck v. State, 908 So. 2d 326 (Fla. 2005), *cert. denied*, 547 U.S. 1035 (2006).

improper editorializations of the proceedings and glaring omissions of crucial facts.

The facts recounted by the Florida Supreme Court on direct appeal are as follows:

> The record establishes that on June 24, 1987, corrections officers Steven Turner and Fred Griffis transported James O'Brien, a state prison inmate, in a van from Glades Correctional Institute to a dermatologist's office for an examination. Griffis, who was not armed, drove the van while Turner watched O'Brien, who was secured in a caged area behind Griffis. After Griffis pulled the van into an alley behind the doctor's office, Turner looked down for his paperwork. Upon looking up, he saw a person, whom he later identified as Van Poyck, aiming a pistol at his head. Van Poyck ordered Turner to exit the van. At the same time, Frank Valdez, an accomplice of Van Poyck's, went to the driver's side of the van. Turner testified that Van Poyck took his gun, ordered him to get under the van, and kicked him while he was attempting to comply with Van Poyck's order. He testified that, while under the van, he saw Griffis exit the van; he noticed another person forcing Griffis to the back of the van; and, while noticing two sets of feet in close proximity to the rear of the van, he heard a series of shots

and saw Griffis fall to the ground. Turner further stated that Van Poyck had stopped kicking him when the gunfire started, but noted that he did not know where Van Poyck was at the time of the shooting. Griffis was shot three times, once in the head and twice in the chest. Expert testimony indicated that the shot to the head was fired with the barrel of the gun placed against Griffis' head and that each of the wounds would have been fatal. It was also determined that the murder weapon was a Hungarian Interarms nine millimeter semiautomatic pistol.

After Griffis was shot, Turner was forced to get up from under the van and look for the keys. Upon realizing that Turner did not have them, Valdez fired numerous shots at a padlock on the van in an attempt to free O'Brien. One of the shots ricocheted off of the van and struck Turner, causing him minor injuries. Turner testified that at around this time Van Poyck aimed the Hungarian Interarms semiautomatic nine millimeter pistol at him and pulled the trigger. Although no bullet was fired, Turner stated that he heard the gun click. Turner then fled the scene when Van Poyck turned his attention to Valdez, who was smashing one of the windows on the van. After Van Poyck noticed that two cars had just driven into the alley, he and Valdez approached the cars and Van Poyck

shattered the windshield of one of the cars with the butt of a gun. Van Poyck and Valdez then ran to a Cadillac parked in an adjacent parking lot and departed from the scene. A police officer, who arrived at the scene and witnessed the two men leaving, radioed for help and a chase followed. During the chase, Van Poyck leaned out of the car window and fired numerous shots at the police cars in pursuit, hitting three of them.

Valdez eventually lost control of the Cadillac and the car crashed into a tree. Van Poyck and Valdez were immediately taken into custody and four pistols were recovered from the car: a Hungarian Interarms nine millimeter semiautomatic pistol, a Sig Sauer nine millimeter semiautomatic pistol, a Starr .22 caliber semiautomatic pistol, and Turner's Smith and Wesson .38 caliber service revolver.

Van Poyck, testifying in his own behalf, denied that he shot Griffis and stated that, while kicking Turner, he heard the gunshots and saw Griffis fall to the ground. He did, however, acknowledge that he planned the operation and recruited Valdez to assist him in his plan. Additionally, he stated that they took three guns with them.

Van Poyck, 564 So. 2d at 1067-1068. (C-1-3)(emphasis

added).

Other facts germane to this petition are as follows. Van Poyck testified at trial, that he wanted to help his friend, James O'Brien escape from prison, and he (Van Poyck), and he alone had been contemplating this for approximately two years (ROA 2619-22; SR 443-446). Van Poyck put the escape plan together, recruited Valdes to assist, and gave Valdes orders about how to proceed. (ROA 2622, 2626-27, 2630-31; SR 446, 450-451, 454-455). While Valdes provided the guns, Van Poyck verified they were loaded. (ROA 2628, 2656-57; SR 452, 480-481). The plan was for Valdes to secure the corrections' van driver and Van Poyck would get the officer who was in the passenger seat (ROA 2647; SR 473).

Following Officer Griffis' murder, Van Poyck turned to Officer Turner and demanded the key to the van and threatened his life (ROA 2649-50; 473-474).

Van Poyck admitted telling the passenger, Officer Turner, to get under the van or he was a dead man (ROA 2648; SR 474). Officer Steven Turner testified that Van Poyck pointed a gun at his head, told him he was a dead man and pulled the trigger. (ROA 1706-1708). Turner heard a click as the gun misfired and he was then able to run away.[5] (Id.) Van Poyck also noted that Valdes went through Officer Griffis' pockets after he was shot and that there was blood around (ROA 2650; SR 474). Van Poyck admitted that he was not under the influence of any substance that might have impaired his ability to think or reason - Van Poyck knew exactly what he was doing on the day of the murder. He was not impaired by any mental infirmity (ROA 2629-31, 2639; 453-455, 463). He also reiterated that he set up the entire criminal plan which resulted in

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[5]Van Poyck was also convicted of the attempted murder of Turner.

Officer Griffis' death. (ROA 2662; SR 486).

The jury was given a special verdict form in this case. They were instructed to check the box for either "felony murder" or "premeditated murder" if the decision as to either theory was unanimous. The jury checked the box for felony murder which demonstrated that they were unanimous in their determination that Van Poyck was guilty of felony murder.

The state did not base its argument for a death recommendation on the theory that Van Poyck was the shooter. For instance, prior to commencement of the penalty phase, the trial court, with the agreement of the parties, confirmed that emphasis would not be placed upon either first-degree murder theory. The trial judge inquired: "Does everybody then agree as to, [the instruction] 'Ladies and gentlemen of the jury, you have found the Defendant guilty of first degree murder,' and I leave it at that?" (ROA 3183; SR 692). Defense counsel

agreed. (Id.). The State sought and discussed the four statutory aggravating factors,[6] the State told the jury to assume that Valdez was the triggerman. (ROA 3511-12; SR 766-767). The defense then argued Van Poyck's participation was minor and that he was not the triggerman, and to this, the State commented on Van Poyck's major role in the crime and noted in passing the triggerman theory, but he never stated that this was proven beyond a reasonable doubt. (ROA 3477-3540, 3562-65; SR 795, 817-820). There has never been a finding by the judge or the jury that in fact they found Van Poyck to be the shooter. The trial court's sentencing order did not find that Van Poyck was the shooter, but only that he may have been the shooter. (F-4).

There has never been a concession by the state

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[6]Those factors are: (1) crime committed while Van Poyck was on parole; (2) crime was committed for purpose of effecting an escape from custody; (3) great risk of death to many persons; and (4) prior violent felony. (ROA 3482-3500, 3507-08). See Van Poyck v. State, 564 So. 2d 1066, 1068-69, 1071 (Fla. 1990) (affirming aggravating factors found by trial court).

that Valdez was the shooter. Instead, the Florida Supreme Court simply found on direct appeal, some seventeen years ago, that there was insufficient evidence to establish that he was the shooter. Van Poyck, supra, at 1069.

REASONS FOR DENYING THE WRIT

QUESTION

CERTIORARI REVIEW IS NOT WARRANTED AS THERE WAS NEVER ANY CHALLENGE IN STATE COURT TO THE STATE COURTS' APPLICATION OF THE LONG ESTABLISHED STANDARD OF REVIEW FOR CLAIMS OF NEWLY DISCOVERED EVIDENCE; THE CLAIM DOES NOT PRESENT A FEDERAL QUESTION; NOR DOES IT CONFLICT WITH ANY OTHER FEDERAL PRECEDENT.
(Claims I and II restated)

Petitioner claims that certiorari review is warranted in the instant case because the state courts applied an incorrect standard of review when assessing his claim of newly discovered evidence. In support of his claim he alleges that because the newly discovered evidence was relevant to whether he was the actual shooter of the victim, this Court's opinion in Bradshaw v. Stumpf, 545 U.S. 175 (2005) requires certiorari review. He argues that the Florida Supreme Court was

required to apply the harmless error standard of Chapman v. California, 386 U.S. 18 (1967); Clemons v. Mississippi, 494 U.S. 738 (1990) and Sochor v. Florida, 504 U.S. 527 (1992).

In further support of his claim for review, he asserts, albeit incorrectly, that the state courts' denial of relief amounted to a legal conclusion by the Florida courts that a defendant's "non-triggerman status" in a case involving co-defendants has no bearing on a capital sentence. He also alleges that the state courts' application of the well recognized standard involving claims of newly discovered evidence, was error. Certiorari review must be denied for the following reasons.

First, any claim involving the propriety of the standard of review employed by the state courts is not properly before this Court as the issue was never presented below. Second, Stumpf is both factually and

legally distinguishable and, therefore, it cannot be relied upon as a basis for certiorari review. And third, a request to review a state courts' determination that newly discovered evidence would "probably not produce a life sentence at a re-sentencing is an issue that turns on the specific facts of this case which are not of any importance beyond the litigants of this case and do not present any conflict or expose a question of unsettled federal law.

Van Poyck's attack on the constitutional propriety of the state courts' application of the newly discovered evidence standard of review is unexhausted and alone warrants a denial of review. On appeal before the Florida Supreme Court, Van Poyck only argued that his case should be stayed until this Court had rendered its decision in Stumpf. At no time did petitioner ever argue that the standard of review employed by the trial court was inapplicable. To the contrary, Van Poyck

conceded the appropriateness of the newly discovered evidence standard in his case. He also conceded that he was not entitled to relief in this case because of the binding precedent of his prior collateral challenges involving other evidence on the identical issue, i.e., "non-triggerman status". He only argued that because his case would be controlled by Stumpf, and assuming an outcome therein favorable to him, the Florida Supreme Court should stay the appeal pending Stumpf. At no time did he ever argue that his claim of newly discovered evidence should be analyzed under the harmless error analysis of Chapman, supra; Clemons, supra or Sochor, supra. Consequently, because the issue was never raised below, the claim is wholly unexhausted, and review must be denied. Anderson v. Harless, 459 U.S. 4 (1982); O'Sullivan v. Boerckel, 526 U.S. 838 (1999)(mandating that issue must be brought to highest court of state to satisfy exhaustion of state

court remedies).

Second, the issue presented does not involve a federal question nor does the state court opinion create any conflict requiring resolution. As noted above, this case simply involves what impact, if any **newly discovered evidence** would have at a subsequent penalty phase. This is not a claim involving the **unconstitutional** withholding of or the **unconstitutional** failure to discover evidence resulting in the denial of a federal right. Therefore, as recognized by this Court, as well as most state and lower federal courts, claims of newly discovered evidence are properly analyzed under the standard that was applied in the instant case and that is, "the defendant must establish that the newly discovered evidence probably would have produced a life sentence." Van Poyck v. State, 961 So. 2d 220, 227-228 (Fla. 2007). (A-9). See Strickland v. Washington, 466 U.S. 668 (1984) (approving appropriateness of the

stringent newly discovered evidence standard); Herrera v. Collins, 506 U.S. 390, 400 (1993)(explaining, "[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding."); Chapman, supra (explaining the appropriate standard of review for constitutional errors); United States v. Agurs, 427 U.S. 97, 111 n. 19 (1976), *receded on other grounds* (same); Cf. Immigration and Naturalization Service v. Abudu, 485 U.S. 94, 107 n. 12 (1988)(same). Consequently, despite the constitutional pretensions of this claim, Van Poyck has not and cannot establish constitutional error.

Moreover, the Florida Supreme Court rejected *in toto*, petitioner's claim that the court ignored or labeled as irrelevant, his non-triggerman status. The Court explained:

> As in Diaz, the trial court in this case found that the death penalty was justified for Van Poyck independent of evidence regarding the identity of the triggerman. The trial court noted that Van Poyck checked the guns to ensure that they were loaded while traveling to the location where the murder occurred, and concluded that "[b]y all evidence Mr. Van Poyck was a major participant in the murder." At most, non-triggerman status would have constituted nonstatutory mitigation which, considering the four aggravating factors and absence of other mitigation, would probably not have yielded a lesser sentence

Van Poyck, 961 So. 2d at 226. (A-15).

Equally unavailing is petitioner's claim that Stumpf justifies certiorari review. As correctly noted by the Florida Supreme Court, this case does not involve a constitutional due process violation, as in Stumpf:

> Bradshaw is largely limited to its facts and procedural posture. Its mandate was simply to reconsider the effect of the new evidence on the sentence, an issue the lower court had not reached because it had erroneously reversed the conviction. In addition, Bradshaw involves a due process claim grounded in inconsistent positions

taken by the prosecution in trials of codefendants, which is not an aspect of this case. To the extent that Bradshaw has any bearing on this case, it stands for the proposition that new evidence concerning the identity of the triggerman is "material" to a death sentencing determination. This Court's 2005 opinion in this case includes the same acknowledgment:

> We do not hold . . .that it makes no difference in the capital sentencing process which of two codefendants actually committed the killing. Rather, we determine only that under the circumstances of this case involving a murder of a prison guard in a brutal armed attack planned by Van Poyck and carried out with Valdez, DNA evidence indicating that Van Poyck was not the triggerman would not have created a reasonable probability of a lesser sentence.

Van Poyck IV, 908 So. 2d at 330. Therefore, Bradshaw does not require reconsideration of the 2005 decision.

Van Poyck, 961 So. 2d at 227; (A-16-17). Van Poyck's

dissatisfaction with the state courts' denial of relief of his newly discovered evidence claim is not a constitutional issue. Review must be denied.

And finally, these claims turns completely on its specific facts, which are of no interest to anyone other than the parties to this litigation, which are of insufficient importance to justify granting the writ. See Bartlett v. Stephenson, 535 U.S. 1301, 1304 (2002) (issues with few, if any, ramifications beyond the presenting case do not satisfy any of the criteria for exercise of certiorari jurisdiction). In fact, the entire factual premise of this claim is based solely on whether a state court judge correctly found that Van Poyck did not satisfy the basic requirement of the standard for newly discovered evidence, i.e., under the facts of this case, there is no reasonable probability that a statement of a jailhouse inmate made twenty years after the murder involving the alleged admission of the deceased

co-defendant would have changed Van Poyck's sentence. Because the petition has little significance except for the "parties to this litigation," review must be denied. Rockford Life Insurance Co. v. Illinois Department of Revenue , 482 U.S. 182, 184, n.3 (1987); Butz v. Glover Livestock Commission Co., 411 U.S. 182 (1973) (dissenting opinion); Powell v. Nevada, 511 U.S. 79, 86-7 (1994) (Thomas, J., dissenting); Chevron U.S.A., Inc. v. Sheffield, 471 U.S. 1140 (1985)(Stevens, J., on denial of certiorari); Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 79 (1955); see also, Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387 (1923) ("... it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from the parties ....").

In conclusion, every reviewing court has found that Van Poyck's sentence of death was not predicated

on an erroneous assumption that he was the triggerman. The Eleventh Circuit's comprehensive determination was as follows:

> During the penalty phase, the witnesses called by the prosecutor only testified about Van Poyck's past crimes and about the fact that he was on parole when the instant offense was committed. The prosecutor did not present additional evidence suggesting that Petitioner was the triggerman.
>
> Even more telling is the prosecutor's closing argument. Petitioner's being the triggerman played only a very minor role in the prosecutor's argument. As aggravating factors, the prosecutor advanced these things: 1) that Petitioner was on parole when the crime was committed; 2) that the crime was committed for the purposes of effectuating an escape from prison; 3) that Petitioner knowingly created a great risk of death to many persons; and 4) that Petitioner had previously been convicted of a violent felony. The establishment of these elements did not require arguing that Petitioner was the triggerman. The prosecutor never argued that it had been established beyond a reasonable doubt that Petitioner was the triggerman.

The only time the prosecutor did argue that the evidence tended to show that Petitioner was the triggerman was in rebutting Petitioner's argument that he was only an accomplice and played only a minor role in the crime. Even in rebutting that argument, however, the prosecutor relied heavily on the idea that, "[r]egardless of who the triggerman is," death would still be appropriate. Rather than focusing the jury on who the triggerman was, the prosecutor stressed that Petitioner could not be considered a minor participant because he had been the one to come up with the idea of breaking O'Brien out of custody and had planned the crime. While the prosecutor did, on a few occasions in his closing argument, say that evidence in the case suggested that Petitioner was the triggerman, the main argument made by the prosecutor was that the death penalty--because of the four aggravating factors and because Petitioner was not a minor participant in the underlying violent felony--was an appropriate sentence for Petitioner, regardless of who actually shot Officer Griffis.

Especially because the prosecutor's main argument was that the death penalty was appropriate regardless of who the triggerman was, we see no reasonable probability that, if Counsel had presented the additional evidence that Petitioner

> was not the triggerman, the outcome of the sentencing phase would have been different. The Florida Supreme Court could reasonably conclude that no prejudice existed. The Florida Supreme Court did reasonably conclude that the triggerman-evidence claim entitled Petitioner to no relief.

Van Poyck v. Florida Department of Corrections, 290 F. 3d 1318, 1325-26 (11th Cir.), cert. denied, 537 U.S. 1105 (2002) (emphasis supplied).

There is no federal question to be reviewed, and certiorari review must be denied.

CONCLUSION

Based on the foregoing arguments and authorities, Respondent respectfully requests that this Honorable Court deny Petitioner's request for certiorari review.

Respectfully submitted,

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